

*United States Court of Appeals
for the Second Circuit*



APPENDIX

75-7371

In the
United States Court of Appeals
FOR THE SECOND CIRCUIT

Docket No. 75-7371

ROGER A. VAN DAMME AND
OLGA VAN DAMME,

Plaintiff-Appellant

vs.

WILLIAM F. McDougall AND THE
NATIONAL CAR RENTAL SYSTEM, INC.,

Defendant-Appellee

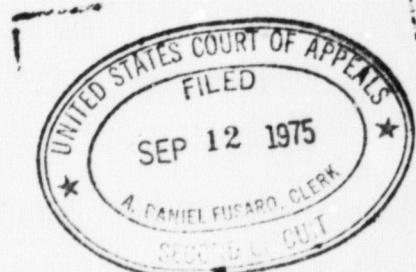
On Appeal from the United States District Court
for the District of Connecticut

JOINT APPENDIX

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CIVIL DOCKET
UNITED STATES DISTRICT COURT

Robert C. Zampatti

TWO
15481

Jury demand date: 12/7/72 by Plaintiffs

D. C. Form No. 106 Rev.

TITLE OF CASE

ATTORNEYS

ROGER A. VAN DAMME,
OLGA VAN DAMME

For plaintiff:

Stephen I. Traub
Lynch, Traub, Singewald & Keefe
152 Temple Street
New Haven, Conn.

vs.

WILLIAM F. McDougall and
THE NATIONAL CAR RENTAL
SYSTEM, INC.

For defendant:

Francis J. Moran (For: Defendants)
35 Elm Street
New Haven, Conn.

STATISTICAL RECORD	COSTS	DATE 1972	NAME OR RECEIPT NO.	REC.	DISB.
J.S. 5 mailed	Clerk	12/7	Lynch, Traub, Singewald & Keefe	15 00	
J.S. 6 mailed	Marshal	12/8	Deposit: " G.F.100869		15 00
Basis of Action: Personal Injury - Motor Vehicle \$275,000.00	Docket fee	1975			
	Witness fees	6/13	Lynch, Traub, Singewald, Keefe & Marlowe (appeal)	5 00	
Action arose at:	Depositions	6/17	Deposit: " G.F.100869		5 00

DATE 1972	PROCEEDINGS	Date Order Judgment N.
12/7	Complaint filed. Summons issued and together with copies of same and of complaint, handed to the Marshal for service.	
"	Claim for Jury Trial, filed by Plaintiffs.	
12/15	Marshal's Return Showing Service, filed - Summons & Complaint.	
12/30	Appearance of Francis J. Moran entered for defendants.	
1973		
1/10	Answer, filed by defendants.	
1/12	Notice to take Deposition of William F. Mac Dougall on February 12, 1973, filed by plaintiffs.	
1/15	Reply to Second Defense, filed by Plaintiffs.	
1/19	Placed on trial list.	
3/28	Depositions of Roger A. Van Damme, Olga Van Damme and William F. MacDougall, filed.	
1975		
2/5	Special Damages, filed by plaintiff Olga Van Damme.	
"	Special Damages, filed by plaintiff Roger A. Van Damme.	
2/27	Pretrial Memorandum, filed by plaintiffs.	
"	Pretrial Memorandum, filed by defendants.	
3/12	PreTrial Report of Special Masters Edwin Raffile, Jr. and Stanley Jacobs, filed. Ready for Assignment for Trial May, 1975.	
5/14	So Ordered. Zampano, J. M-3/21/75 Copies mailed.	
	Jury Trial Commences. 18 jurors report. Basic panel of 12 jurors drawn. 2 jurors excused for cause by the Court. Challenges: Pltf: 3; Deft. 3. 6 jurors impanelled and sworn. Case continued until May 22, 1975 to follow Bowen case. Murphy, J. M-5/15/75	
5/27	Jury Trial Continues. 6 Jurors present. 4 Plaintiff's witnesses, including plaintiffs, sworn and testified. Plaintiff's Exhibits 1 thru 4 filed. *Medical Record & affidavit of Roger Van Damme, received from Yale-New Haven Hospital. Plaintiff rests on liability at 1:28 P.M. Defendants' Motion that judgment be entered in favor of the defendants - Decision Reserved. Court adjourned at 1:59 P.M. until 10:00 A.M. 5/28/75. Murphy, J. M-5/27/75	
5/28	Medical Record of Olga Van Damme received from Milford Hospital and filed at Waterbury.	
"	Medical Record of Roger Van Damme received from Milford Hospital and filed at Waterbury.	
"	Jury Trial Continues. Plaintiff's Request to Charge filed. Plaintiff's Interrogatories (2 sets) to the Jury, filed. Excerpt from Direct Examination of William McDougall and Testimony of Olga Van Damme taken May 27, 1975, filed. Defendant Rests at 10:02. Plaintiffs' Oral Motion for a Mistrial - Denied. Court rules on Requests to Charge. Jury enters courtroom - 6 jurors present. Summation: Pltf. 10:20 - 11:15; Deft. 11:15 - 11:34; Closing by Pltf. 11:34 = 11:42. Court's Charge 11:52 - 12:06. Both sides take exception to charge in chambers. Additional Charge 12:08 - 12:09. Jury retires. All full exhibits and interrogatories handed to jury at 12:12 and they start their deliberation. Lunch brought in for the jury at the expense of the Gov't. Court receives note from jury at 1:32. Court and counsel agree upon answer and typed answer to question delivered to jury at 1:40. Court Exhibit 1 (Note) marked for ident. Jury returned to courtroom at 2:02 P.M. with Interrogatory #1 answered that the defendants were not negligent - Foreman Karl Holstein. Verdict verified and ordered recorded. No polling of jury. Jury excused at 2:03 P.M. Pursuant to the	

(Cont'd.)

110 Rev. Civil Docket Continuation ROGER A. VAN DAMME, ET AL v. WILLIAM F. McDougall, ET AL

DATE 1/5	PROCEEDINGS	Date Order or Judgment Noted
	answer to the one interrogatory, the Court directs that Judgment be entered in favor of the two defendants Mr. McDougall and the National Car Rental System, Inc. Plaintiffs' Oral motion to set aside Verdict denied. Court adjourned at 2:10 P.M. Murphy, J. 1/5/29/75	
6/3	Judgment filed and entered that plaintiffs recover nothing of the defendants and that this action be and is hereby dismissed on the merits, with costs to the defendants. Markowski, C. Approved, Murphy, J., Sitting by designation. Copies mailed to counsel of record.	
3 3 5	Notice of Appeal, filed by plaintiffs. Copies mailed. Appellant's Bond For Costs, filed. Court Reporter's Transcript of Trial before Judge Murphy on May 27, and 28, 1975, filed. Beecher, R.	

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

ROGER A. VanDAMME, OLGA VanDAMME,
PLAINTIFFS

VS.

CIVIL ACTION

WILLIAM F. McDougall, and THE
NATIONAL CAR RENTAL SYSTEM, INC.,
DEFENDANTS

NO. 15,487

C O M P L A I N T

1. The plaintiff, ROGER A. VanDAMME, is a resident of New York and resides at 3300 Whalley Avenue, Bronx, New York.

2. The plaintiff, OLGA VanDAMME, is a resident of New York and resides at 3300 Bailey Avenue, Bronx, New York.

3. The defendant, WILLIAM F. McDougall, is a resident of Connecticut and resides at 363 Priscilla Street, Bridgeport, Connecticut.

4. The defendant, THE NATIONAL CAR RENTAL SYSTEM, INC., is a Nevada corporation with offices located at 65 State Street, Extension, Bridgeport, Connecticut.

5. The amount in controversy exceeds the sum of \$10,000.00.

6. On or about Friday, September 29, 1972, at or about 4:20 P. M., the plaintiff, ROGER A. VanDAMME, was operating a motor vehicle which was owned by his father, ROGER T. VanDAMME, not a party hereto, in a generally easterly direction on the Boston Post Road, also known as Route One, in Milford, Connecticut.

7. At that time, the plaintiff, OLGA VanDAMME, was a passenger in the backseat of the vehicle operated by the

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plaintiff, ROGER A. VanDAMME.

8. At said time and place, as the VanDamme vehicle approached an intersection where Route One intersects with North Street, a public thoroughfare extending in a generally northerly and southerly direction, a collision ensued between the VanDamme vehicle and the vehicle driven by the defendant, WILLIAM F. McDOUGALL.

9. The defendant, WILLIAM F. McDOUGALL, was at that time and place, operating a two axle truck which he had rented from the defendant owner NATIONAL CAR RENTAL COMPANY, in a westerly direction along said Route One at the place where it intersects with North Street.

10. At said time and place, and without warning, the defendant, WILLIAM J. McDOUGALL, turned abruptly to his left, towards the south, on North Street and drove his truck in front of the VanDamme vehicle, causing a violent collision between the two vehicles.

11. As a result of said collision, the plaintiff, ROGER A. VanDAMME and the plaintiff, OLGA VanDAMME, sustained serious injuries, more particularly, as to ROGER A. VanDAMME, severe head injuries, brain damage and impaired vision of the left eye, along with other less serious injuries, and more particularly, as to the plaintiff, OLGA VanDAMME, a broken right hand, multiple abrasions, and other less serious injuries. Some of these injuries are now or may be permanent in their nature.

12. As a result of the aforesaid injuries, both plaintiffs have in the past, continue to and will in the future sustain

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substantial economic loss, to include medical bills, lost employment opportunity, lost income and residual and permanent damages.

13. The collision as aforesaid and all of the consequences emanating therefrom as aforesaid were the direct and proximate result of the careless and negligent driving of the defendant, WILLIAM F. McDougall, in that he:

a. failed to grant the plaintiffs the right of way as it was his duty to do;

b. failed to keep a proper lookout for the plaintiff's vehicle;

c. drove through an intersection against the traffic signal;

d. failed to keep his vehicle under proper control so as to avoid a collision with plaintiff's vehicle;

e. drove his vehicle in such a way as to block the easterly travelled lanes of Route One so as to cause the plaintiff's vehicle to collide with his vehicle.

The Plaintiff, ROGER A. VanDAMME, Claims Two Hundred Fifty Thousand (\$250,000.00) Dollars Damages.

The Plaintiff, OLGA VanDAMME, Claims Twenty-Five Thousand (\$25,000.00) Dollars Damages.

The Plaintiffs Claim a Trial by Jury.

STEPHEN I. TRAUB, ESQ.
LYNCH, TRAUB, SINGEWALD AND KEEFE
152 Temple Street
New Haven, Connecticut
THEIR ATTORNEYS

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

ROGER A. VanDAMME and OLGA
VanDAMME, PLAINTIFFS

VS.

CIVIL ACTION

WILLIAM F. McDougall and THE
NATIONAL CAR RENTAL SYSTEM,
INC., DEFENDANTS

NO. 15, 487

PLAINTIFFS' REQUEST TO CHARGE

I. RIGHT OF WAY:

1. Section 14-242(e) of the CONNECTICUT GENERAL STATUTES provides that a driver of a vehicle intending to turn to the left within an intersection shall yield the right of way to any vehicle approaching from the opposite direction which is within the intersection or so close to the intersection of public highway as to constitute an immediate hazard.

2. If the operator of a vehicle intending to turn left at an intersection should, in the exercise of reasonable care, recognize the danger of collision with an approaching automobile, but nevertheless turns his vehicle at such intersection, the approaching vehicle has the right of way.

CARLIN V. HAAS, 124 Conn. 259 (1938).

3. The driver of a left-turning vehicle cannot escape his responsibility to grant the right of way to an approaching vehicle by stating that he did not see the vehicle, if, in the exercise of reasonable care, he should have seen it.

BRANGI V. CONNECTICUT MOTOR LINES, INC., 134 Conn. 562.

4. In order for an oncoming vehicle to have the right of way over a left-turning vehicle, the oncoming vehicle need not be actually within the intersection itself but need only be close enough thereto so as to constitute an "immediate hazard" should the left-turning vehicle proceed to complete such a turn. PINTO V. SPIGER, 163 Conn. 191 (1972).

5. Section 14-245 of the CONNECTICUT GENERAL STATUTES defines "intersection" as the area common to two or more highways which cross each other. It goes on further to say that each driver of a vehicle approaching an intersection shall grant the right of way at such intersection to any vehicle approaching from his right when such vehicles are arriving at such intersection at approximately the same time.

6. When one vehicle is intending to turn left at an intersection, when a vehicle is approaching in the opposite direction on the same street, the vehicle turning left must give the right of way to such other vehicle, as such vehicle is considered to be approaching from the right. BARRY V. LEISSL, 109 Conn. 484 (1929).

7. A driver when faced with a green arrow at an intersection must act as a reasonably prudent person with knowledge that he cannot proceed in disregard of other vehicles in the intersection. CONNECTICUT GENERAL STATUTES, Section 14-299 (b) (4). GORDON V. AMERICAN SUMATRA, 146 Conn. 383, 386; 151

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A. 2d 341; ROSE V. CAMPITELLO, 114 Conn. 637, 640; 159 A. 887; TURBERT V. MATHER MOTORS, INC., ET ALS, Supreme Court of Connecticut, October Term, 1973, 334 A. 2d 903.

8. A driver facing a green arrow signal shown above or in combination with another indicator may cautiously enter the intersection only to make the movement indicated by such arrow, but such vehicular traffic shall yield the right of way to other traffic lawfully within the intersection. CONNECTICUT GENERAL STATUTES, Section 14-299(b) (4); TURBERT V. MATHER MOTORS, INC., ET ALS, supra.

9. Automatic traffic control systems are intended to minimize the dangers inherent at the locations where they are installed and it is the duty of motor vehicle operators to obey and observe traffic signals. TURBERT V. MATHER MOTORS, INC., ET AL, supra.

10. When comparing CONNECTICUT GENERAL STATUTE, Sections 14-242(e) and 14-299(b) (4), each imposes a duty on a driver attempting to turn left. However, Section 14-242(e) imposes a higher standard of care in requiring the driver turning left to yield not only to vehicles within the intersection, but also to those so close as to constitute an imminent hazard. TURBERT V. MATHER MOTORS, INC., ET AL, supra, at P. 908.

11. A driver facing a green light must operate his vehicle with reasonable safety and cannot disregard the presence of other vehicles which might be approaching the

intersection. PINTO V. SPIGER, 163 Conn. 191, 196; 302 A. 2d 266; ROSE V. CAMPITELLO, 114 Conn. 637, 640; 159 A. 887; TURBERT V. MATHER MOTORS, INC., ET AL, supra, at P. 908.

II. LIABILITY OF OWNER OF RENTED VEHICLE (DEFENDANT, THE NATIONAL CAR RENTAL SYSTEM, INC.).

12. Any person renting or leasing to another any motor vehicle owned by him shall be liable for any damage to any person or property caused by the operation of such motor vehicle while so rented or leased, to the same extent as the operator would have been liable if he had also been the owner. CONNECTICUT GENERAL STATUTES, SECTION 14-154a.

III. NEGLIGENCE PER SE:

13. In Connecticut the unexcused violation of a statute, ordinance, or administrative regulation is negligence per se, or negligence as a matter of law. MONROE V. HARTFORD STREET RY. CO., 76 Conn. 201; MURPHY V. WAY, 107 Conn. 633; ANDREWS V. WHITE BUS LINE CORPORATION, 115 Conn. 464; FALLON V. COLLIER, 133 Conn. 370; COUGHLIN V. PETERS, 153 Conn.

99. The violation of such an enactment is negligence per se if the plaintiff is within the class of persons whom the statute was intended to protect and if the harm was of the type that the enactment was intended to prevent. PROSSER ON

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TORTS, SECOND EDITION, Section 34; KNYBEL V. CRAMER,
129 Conn. 439.

14. A violation of the statute designed for the protection of the public is in itself negligent, irrespective of whether the conduct which constitutes the violation is that of a reasonably prudent person. ESSAM V. NEW YORK, N. H. & H. R. CO., 140 Conn. 319, 325; JACOBS V. SWIFT & CO., 141 Conn. 276, 279. And even though literal compliance with all the positive requirements of the motor vehicle laws may often be inconvenient or impractical, one who violates the statutory mandate does so as his own risk. ANDREW V. WHITE BUS LINE CORPORATION, 115 Conn. 464.

15. Therefore, if you find that the defendant WILLIAM F. McDougall violated any one of the statutes I have referred to, you must find him negligent as a matter of law. COUGHLIN V. PETERS, 153 Conn. 99, 101 (1965).

IV. CONTRIBUTORY NEGLIGENCE:

16. There is no evidence in this case of any contributory negligence on the part of the driver ROGER A. VanDAMME. I, therefore, charge you as a matter of law that you may not consider any negligence by him as having any significance in this case.

(If the Court does not charge as set forth in Paragraph 16, to which plaintiffs except, then the following requests are made).

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17. In determining whether contributory negligence shall bar recovery in an action against a negligent defendant, it is essential that the negligence of the plaintiff "contribute" to the result. As the Court said in one case, the negligence of the plaintiff must contribute "directly...materially and essentially" to his injury before it will bar his recovery. STICKNEY V. EPSTEIN, 100 Conn. 170, 1975.

18. A negligent plaintiff may still recover from a negligent defendant if the negligence of the plaintiff was not a substantial factor in causing the results. SMITHWICK V. HALL & UPSON COMPANY, 59 Conn. 261.

19. The usual tests concerning proximate cause and substantial factor are used in determining whether the negligence of the plaintiff "contributed" to the result. If the negligence of the plaintiff is not a "cause" of the accident, but is merely a "condition," the plaintiff may recover notwithstanding his negligence. ANDREW V. DOUGHERTY, 96 Conn. 40.

20. The conduct of the plaintiff ROGER A. VanDAMME is called into question by the defendants' Special Defense of contributory negligence. Although the application of THE EMERGENCY DOCTRINE does not alter the standard of care to be exercised, it is a factor to be considered in the evaluation of the plaintiff ROGER A. VanDAMME'S conduct. MEI V. ALTERMAN,

TRANSPORT, 159 Conn. 307, 312(1970).

21. In an emergency not due to his own negligence, one is not relieved of all obligations to exercise due care but is required to exercise the care of an ordinarily prudent person acting in such emergency. DEGNAN V. OLSON, 136 Conn. 171, 177, 69 A. 2d 642.

22. An automobile driver on the highway has the right to assume that others driving cars will observe the rules prescribed by law respecting lights upon the rear of their vehicles. ROZYCKI V. YANTIC GRAIN CO., 99 Conn. 711.

23. It is generally held that an involuntary act resulting from sudden fright cannot be imputed to the actor as contributory negligence. KOSKOFF V. GOLDMAN, 86 Conn. 415.

24. If by reason of fright, the plaintiff spun the wheel of his vehicle which contributed to the collision, he is to be relieved of all responsibility for the collision.

RUSSO V. DIMENSTEIN, 138 Conn. 220, 223; FRENCH V. MERTZ CO., 116 Conn. 18, 20; JOHNSON V. PULIDY, 116 Conn. 443, 447.

Also see CONNECTICUT LAW OF TORTS, 2nd Ed., WRIGHT & FITZGERALD, P. 69.

25. In this case, if the sudden appearance of the McDougall truck was something which the plaintiff Roger A. Vandamme could not reasonably have expected or foreseen or under which all circumstances, using reasonable care, he could not have avoided, the resulting actions may have been

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inevitable from which no liability for contributory negligence is imposed upon him. GOSSELIN V. ROBERT PERRY, CONNECTICUT LAW JOURNAL, March 12, 1974 (Connecticut Supreme Court, January Term, 1974).

V. IMPUTING NEGLIGENCE: (PLAINTIFF OLGA VanDAMME)

26. If the jury finds negligence on the part of the plaintiff ROGER A. VanDAMME, that negligence is not to be imputed to the plaintiff OLGA VanDAMME as a matter of law. (See CONNECTICUT LAW OF TORTS, 2nd Ed., WRIGHT & FITZGERALD, Section 70, pps. 137, 138).

27. The negligence of an operator of a motor vehicle is not imputed to a passenger of that vehicle unless certain special relationships existed, none of which exist here.

WRIGHT, supra., pps. 137, 138; WING V. EGINTON, 92 Conn. 336; WEIDLICH V. N.Y.R.R., 93 Conn. 438.

VI. NEGLIGENCE:

28. Where several acts of negligence are alleged by the plaintiffs, proof of any one of them is sufficient for the jury to find the defendant driver negligent. HOFFMAN V. THE MOHICAN CO., 136 Conn. 392, 395.

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VII. COURT'S COMMENTS:

29. During the trial of this case, I have made several comments to plaintiffs' counsel about his conduct of the trial. I have also interrogated certain witnesses put on the witness stand by the plaintiffs' counsel. You are to keep in mind that my job is to conduct a fair trial and you should not assume that any remarks I have made during the trial or my charge to the jury in this case reflects any prejudice or bias in this case for or against any parties to this action. It is for you, the jury, to decide the facts of this case and not for the Court to do or to try to influence you one way or the other.

THE PLAINTIFFS, ROGER A. VanDAMME and
OLGA VanDAMME

BY

STEPHEN I. TRAUB, ESQ. FOR
LYNCH, TRAUB, SINGEWALD, KEEFE AND MARLOWE
THEIR ATTORNEYS

This is to certify that on this 28th day of May, 1975, a copy of the foregoing was given in hand to:

Francis J. Moran, Esq.
35 Elm Street
New Haven, Connecticut

STEPHEN I. TRAUB, ESQ.

1 on North Street?

2 A Yes, sir. No. They were on Orange Avenue. No.
3 There would be no turn for them onto North Street. It was
4 Orange.

5 Q All right. Let me ask you this. On September 29,
6 1972, were you involved in a collision at the corner of the
7 Boston Post Road or some place at the intersection of the Boston
8 Post Road and North Street in Milford, Connecticut?

9 A Yes, sir.

10 Q And did the collision take place at that
11 intersection some time in the middle of the afternoon or the
12 late part of the afternoon?

13 A Yes, sir.

14 Q And as you approached the intersection, you
15 turned left; is that right?

16 A Yes, sir.

17 Q And were there any cars coming towards you as you
18 approached the intersection?

19 A Coming towards me?

20 Q Yes. From the west on the eastbound section
21 of the Boston Post Road? Were there cars going east?

22 A Yes, sir.

23 Q Wasn't there a collision between a car coming
24 east and your truck?

25 A Right.

1 Q All right. So you know it was coming from the
2 west moving east before the collision; right?

3 A Right.

4 Q Now, as you approached the intersection before
5 the collision, did you see any other cars other than that one
6 car before the collision?

A Yes. I seen there was three cars coming.

8 Q And what did those three cars do?

9 A You want me to tell you exactly what they did?

10 Q. I want you to tell us exactly.

11 A The first car made his turn. The second car
12 pulled out, must of slammed on his brakes. I had made my turn.
13 I was almost half way down the other road. I heard a thump.
14 I stopped the truck. I got out. I seen the car hit my truck.
15 That's my exact version.

16 Q That is your entire version of the entire
17 incident, including the accident?

18 A Yes, sir.

Q Now, let me go back. There were three cars; right?

20 A Yes, sir.

21 Q Is that right?

22 A As far as I remember seeing, there was three cars.

23 Q You were going west and you wanted to turn left
24 to go south; is that right?

25 A Yes, sir.

1 Q Okay. As you approached the intersection, you
2 had a green arrow, you testified?

3 A Yes, sir.

4 Q Did you immediately turn left? Did you stop?
5 What did you do?

6 A I slowed up because I had to stop.

7 Q Why?

8 A Because my truck would never make the turn without
9 slowing it up and putting it back in gear.

10 Q How fast were you going?

11 THE COURT: When?

12 Q As you approached the intersection.

13 A I could have been doing 15.

14 Q You were going 15 miles an hour as you approached
15 the intersection?

16 A I would say so.

17 Q All right. And did you make a left turn into the
18 intersection?

19 A Yes, sir.

20 Q Now, you said there were three cars coming from
21 the west towards you; is that right?

22 A Yes, sir.

23 Q And in which of the travel lanes were they in?

24 A The far left.

25 Q Far left. All in the same lane?

1 A Yes, sir.

2 Q Three cars in the far left of how many lanes?

3 A I would say three lanes.

4 THE COURT: He just said they were all in
5 the same lane.

6 BY MR. TRAUB:

7 Q I am asking him how many lanes there were?

8 A I would say it was a three lane road.

9 Q Your testimony here today is --

10 THE COURT: No. He just said three lanes.

11 Next question, please.

12 BY MR. TRAUB:

13 Q All right. It was three lanes and all three cars
14 were in the left-most lane?

15 A Yes, sir.

16 Q Now, as you approached the intersection, you saw
17 these three cars, didn't you?

18 A Yes. I could.

19 Q Did you stop?

20 A No, sir.

21 Q So you turned left and proceeded into the
22 intersection; is that right?

23 A Yes.

24 Q And you saw three cars coming; is that right?

25 A Yes.

1 Q And what happened to car No. 1?

2 A Made a turn.

3 Q Which direction?

4 A Towards Orange Road.

5 Q That would be to his -- what direction?

6 A His left.

7 Q No. 1 turned left. So you are saying he turned
8 from the right-most of three lanes --

9 A (Witness shakes head)

10 Q -- across three lanes and turned left; is that
11 right?

12 MR. MORAN: Objection.

13 THE WITNESS: No, sir.

14 MR. TRAUB: Your Honor, this witness just
15 testified --

16 THE COURT: Counsel, please don't tell me
17 what the witness said. We have six people in the box
18 who are going to decide what he said.

19 THE WITNESS: Sir, I said he was in the
20 left lane and he made his turn.

21 BY MR. TRAUB:

22 Q Maybe there is confusion. When you say left,
23 whose left, yours or the driver's?

24 A Sir, here's the road (indicating). This is the
25 Boston Post Road heading east. You have one lane here, one

1 lane here for straight traffic, you have one lane which is on
2 the left which has an arrow for your left turn. This is where
3 I'm saying the cars were coming from.

4 Q Now, you said that the cars were in the left lane.
5 Would that be as you looked at the cars or on their left lane?
6 That's all I want to know, so there is no misunderstanding.
7 Was it their left or your left?

8 A No. It was their left.

9 Q In other words, was it the lane closest to the
10 island in the center?

11 A Yes, sir.

12 Q Okay. Were there three cars in that lane as you
13 approached?

14 A That's what I remember seeing, yes, sir.

15 Q And did any of those three cars go left?

16 A Yes, sir. The first car did.

17 Q One car turned left?

18 A Yes, sir.

19 Q What did No. 2 do?

20 Q No. 2 was in the lane to be making a left. I
21 seen him pull out because as I was making my turn I could see
22 him pull out. Now, I continued along. I was almost into the
23 other street which is North, and I heard a thump. I stopped
24 my truck which was already a partial way into North Street,
25 got out and I found his car.

1 Q So the collision was between you and No. 2?

2 A Yes, sir.

3 Q And whatever happened to No. 3?

4 A No. 3 I -- who has time to, you know --

5 Q You don't know?

6 A No, sir.

7 Q But the collision was between you and No. 2; there
8 is no question about that?

9 A No, sir.

10 Q And there is no question in your mind there were
11 three cars going from the west to the east?

12 A Very sure.

13 Q And there is no question that you saw all three
14 cars before the collision?

15 A Yes, sir.

16 Q And there is no question that as you turned left,
17 you had a left overhead light --

18 A No, sir.

19 Q -- is that correct?

20 A Yes, sir.

21 Q Now, as you turned left, had Car No. 1 reached
22 the intersection yet?

23 A That I can't rightly say.

24 Q Well, did it turn before you?

25 A I would say it turned, I would say, about the

1 same time as I did.

2 Q No. 1 turned left when you turned left?

3 A I would say so, sir.

4 Q Okay. And then that left 2 and 3?

5 A Yes, sir.

6 Q Now, you saw 2 and 3 coming?

7 A Yes, sir.

8 Q And how far away was No. 2?

9 A Maybe 50 feet.

10 Q 50 feet from where? From you?

11 A Yes.

12 Q 50 feet from you, Mr. McDougall, was the car
13 at the time you first saw it or at the time you turned into
14 the intersection?

15 A I guess when I turned into the intersection.

16 Q All right. So there is no misunderstanding now
17 you turned left, seeing this other car about 50 feet away;
18 is that right?

19 A Yes, sir.

20 Q All right. You proceeded into the intersection
21 and you went across the highway and there was a collision;
22 is that right?

23 A Yes, sir.

24 Q All right. And the car was about 50 feet away?

THE COURT: Counsel, please. That is

1 beating a dead horse. Now get off it and get onto
2 something else.

3 MR. TRAUB: All right, sir.

4 Q When is the last time that you looked at an
5 overhead light before turning into the intersection?

6 A When was the last time I looked at one?

7 Q Yes.

8 A In that particular incident?

9 Q Yes. Before you turned into the intersection.

10 A I don't think I -- I don't think I get you on
11 that one.

12 Q Well, you said you saw a light pointing left that
13 was green; right?

14 A Right. Yes, sir.

15 Q And there must have been some time when you first
16 saw it. Where were you when you first saw the green arrow?

17 A Right in front of it.

18 Q Right in front of it; is that right?

19 A Right.

20 Q That is the first time you saw it?

21 A I could see it as I am coming down, but --

22 Q All right. So you could see it as you were
23 approaching it?

24 A Yes, sir.

25 Q As you approached it, did you keep your eye on it?

1 A Yes, sir.

2 Q Did it change at any time?

3 A Never.

4 Q The arrow never changed; right?

5 A No, sir.

6 THE COURT: Counsel, you can't afford
7 to write everything down. We have a girl who writes
8 everything down.

9 BY MR. TRAUB:

10 Q As you proceeded under the light, was it green?

11 A Yes, sir.

12 Q How do you know that?

13 A Because it was dead green when I started making
14 my turn.

15 Q Okay. So you know when you were under it, there
16 is no question in your mind --

17 A No question in my mind, sir.

18 Q -- you're sure it was green?

19 A Yes, sir.

20 Q A car turned left in front of you; right?

21 A Yes, sir.

22 Q Two other cars were coming, one of which was 50
feet from where you were at that time?

23 A I would say about 50 feet, yes.

24 Q You continued into the intersection?

1 A Yes.

2 Q And the collision took place?

3 A Yes, sir.

4 Q Which lane was the car that was coming from the
5 west to the east travelling in when you saw it? In other words,
6 the car that hit you, what lane was it in?

7 A He was coming from the east.

8 Q Well, whatever direction he was coming from, you
9 saw him coming, which lane was he in?

10 A He was in the lane to make a left-hand turn.

11 Q He was the one that hit you?

12 A Yes, sir.

13 Q He was in the lane to make a left-hand turn?

14 A If he was in the outside lane, I would have never
15 kept going.

16 Q So it is your testimony then that the car that
17 struck you was in the most -- in other words, it would have
18 been in his left lane and not yours?

19 A His left towards the island, closest to the island.

20 Q He was closest to the island?

21 A Yes, sir.

22 Q And where did the collision take place?

23 A Almost on North Street.

24 Q Now, before we go any further, are you able now,
25 sir, by use of Plaintiffs' Exhibit 1 --

1 MR. TRAUB: At the deposition, Your Honor.
2 We can just cover those markings if it's all right.

THE COURT: It doesn't make any difference.
Mark them 3 and 4.

THE CLERK: Yes, Your Honor.

7 (Two photographs marked Plaintiffs' Exhibits 3
and 4, respectively.)

9 MR. TRAUB: Shall I show these to the jury,
Your Honor?

THE COURT: It's up to you, counsel.

MR. TRAUB: Yes. (hands documents to jury)

3 THE COURT: You can continue with questioning
the witness.

MR. TRAUB: All right, Your Honor.

16 Q As you were turning into the intersection,
17 Mr. McDougall, going left off the Boston Post Road into North
18 Street, was there a continuous turn as you turned left up to
19 the time of the collision?

20 THE COURT: What does that mean: "Was
21 there a continuous turn?"

22 BY MR. TRAUB:

23 Q Continuous movement of your vehicle?

24 A Yes, sir.

25 Q So in other words, you approached the light, it
was green; is that right?

1 A Yes, sir.

2 Q And you were moving to the left as you reached
3 the intersection; is that correct?

4 A Making my left turn.

5 Q Yes. And you continued -- you moved continuously
6 until the collision; is that correct?

7 A Yes, sir.

8 Q So as I understand, there was no stopping of
9 your truck --

10 THE COURT: He said he moved continuously
11 until the collision.

12 BY MR. TRAUB:

13 Q And your truck did not stop?

14 THE COURT: He moved continuously he said.

15 MR. TRAUB: Yes, sir.

16 Q / Did your truck stop before the collision?

17 A No, sir.

18 Q All right.

19 THE COURT: Counsel, you have to ask
20 questions more rapidly and we are losing time because
21 you are writing the answers down.

22 BY MR. TRAUB:

23 Q Do you know if there were, from your own knowledge,
24 any witnesses to this accident?

25 A None that I know of.

MR. TRAUB: I am almost through, Your Honor.

2 Q Did you hear any statements made by any passengers?
3 in the automobile which collided with you?

4 A No, sir.

5 Q And as I understand your testimony, the vehicles
6 in these two photographs, Plaintiffs' Exhibit 3 and 4 are as
7 they appeared to you some time after the accident?

8 A As far as I can remember. Yes.

9 MR. TRAUB: I have nothing further of this
10 witness, Your Honor.

THE COURT: Any cross now or later?

12 MR. MORAN: Your Honor, I don't wish to
13 ask this witness any questions at this time.

14 THE COURT: You may step down, sir.

15 MR. TRAUB: Mrs. Van Damme.

17 O L G A V A N D A M M E, called as a witness,
18 having been duly sworn, testified on her oath as follows:

19 THE CLERK: Will you, please, state your
20 name and address for the record?

21 THE WITNESS: New York City. 3300 Bailey
22 Avenue, Bronx. Olga Van Damme.

23 DIRECT EXAMINATION

24 BY MR. TRAUB:

25 Q Are you a plaintiff in this action, Mrs. Van Damme?

1 A Yes.

2 Q And at the time of the bringing of this action,
3 were you a resident of New York City?

4 A Yes, sir.

5 Q And do you recall the events of September 29, 1972?

6 A Yes. Very well.

7 Q And were you a passenger in a Volkswagen automobile
8 at that time?

9 A Yes, sir.

10 Q And who -- withdrawn. Do you recall an accident
11 in which you were involved some time that day?

12 A Very well.

13 Q And at the time before the collision, where were
14 you coming from?

15 A From New York.

16 Q And where were you going to?

17 A Well, we wanted to go first to Alexander's and
18 then to Woodmont, Milford.

19 THE COURT: You were coming from New York
20 to Milford?

21 THE WITNESS: Yes.

22 THE COURT: Thank you.

23 BY MR. TRAUB:

24 Q You say "we". Who is "we"?

25 A I and my son because my son was driving.

1 Q And your son is Roger A. Van Damme?

2 A Right.

3 Q And he is also a plaintiff in this case?

4 A Yes.

5 Q What was the weather like --

6 A It was --

7 Q Please let me ask the question. What was the
8 weather like just before the accident took place in Milford,
9 Connecticut at the scene of the accident?

10 A It was drizzling. It was grayish weather, and
11 the whole day was kind of rain and drizzle. But that moment
12 it was drizzling.

13 Q Was the pavement wet?

14 A Wet, yes.

15 Q You said your son was operating the Volkswagen?

16 A Right.

17 Q You were on the way to Alexander's?

18 A Right.

19 Q And you came from New York?

20 A Right.

21 Q How long had you --

22 THE COURT: I'm sorry. I missed the
23 Alexander's part. I thought she said she was going to
24 Milford.

25 THE WITNESS: Meanwhile we wanted to e

1 to Alexander's first.

2 THE COURT: You mean the department store?

3 THE WITNESS: Yes.

4 THE COURT: Thank you.

5 BY MR. TRAUB:

6 Q That was down the Boston Post Road a ways?

7 A Yes.

8 Q And then you were going to Woodmont?

9 A Right.

10 Q As you approached -- withdrawn.

11 What time did you depart from New York? Do you
12 recall?

13 A About -- around 2 o'clock I would say.

14 Q As you approached the intersection of the Boston
15 Post Road and North Street, where were you riding in the
16 Volkswagen?

17 A We were in the right lane.

18 Q No. Where were you in the car?

19 A Oh, I was in the back, behind my son.

20 Q In the back seat?

21 A In the back seat.

22 Q Do you recognize Plaintiffs' Exhibit 1, this
23 drawing that I am referring to here?

24 A Can I come closer? I don't see without glasses.

25 Q All right.

1 A Which way is Alexander's? This way or that
2 way (indicating)?

3 Q Well, if this is north and New Haven is here
4 and Bridgeport there and Milford south, does that help you?

5 A Alexander's would be then here (indicating).

6 Q Now, do you recognize the map?

7 A Yes.

8 Q Okay. You may please resume the stand.
9 Do you recall the automobile approaching the intersection of
10 North Street and Boston Post Road sometime in the middle
11 afternoon of September 29, 1972?

12 A Yes. I do.

13 Q Do you recall the day of the week it was?

14 A Oh, yes. Friday.

15 Q There were just two of you in the car?

16 A Right.

17 Q And what happened?

18 A Well, we were proceeding with a green light and
19 we were parallel to another car which was to my left, so it was
20 about the same speed as another car proceeding, and it was green
21 light, and then suddenly I hear my son screaming, oh, like
22 this, it was a fear, like a fear. I looked and I seen the
23 truck before us. My son, that moment when he screamed, he
24 pressed -- he took the wheel, he pressed on the brakes and
25 tried to turn the wheel to the right side to avoid the truck.

1 but it was question of seconds, maybe two seconds, and it was
2 a crash.

3 Q And did the Volkswagen collide with the truck?

4 A Yes. He came under it.

5 Q And do you recognize these two exhibits, Plaintiffs'
6 3 and 4 as the appearance of the truck and the automobile?

7 A Yes. Yes. I do.

8 MR. TRAUB: I have nothing further of
9 this witness, Your Honor.

10 MR. MORAN: I haven't any questions,
11 Your Honor.

12 THE COURT: Well, I have some.

13 EXAMINATION

14 BY THE COURT:

15 Q Would you tell me again what you remember of the
16 accident and keep your face toward the jury because they're
17 the ones that want to hear it more than I do. You said you
18 were proceeding in the back seat of the car with your son
19 driving, that it was drizzling and what happened? Look at
20 the jurors.

21 A Yes. My son, suddenly a scream of fear. I was
22 sitting like this, leaning with one hand on the front seat
23 (indicating), you know, looking around what was going on, and
24 one hand was down here (indicating). So when I heard him
25 screaming, then I looked up and I seen the truck before my eyes.

1 But I see at the same time after my son screamed, he took the
2 wheel and pressed with his feet on the brakes and tried to
3 turn it a little bit to avoid, but it was -- the truck was
4 pretty close and it was slippery and the car skidded.

5 Q When did you see the truck for the first time?

6 A When my son screamed.

7 Q When your son screamed?

8 A Yes.

9 Q And how far away were you then do you estimate?

10 A From the truck?

11 Q From the truck.

12 A Pretty close I would say.

13 Q Well, make a pretty fair estimate of the distance.
14 From here to the first man in the jury box?

15 A Yes. I think so.

16 Q About that distance?

17 A I am not a hundred per cent sure. It might be so,
18 yes. It might be so because when he wanted to avoid it in
19 any case he had time to turn a little.

20 Q That was the first time that you had seen the truck?

21 A Yes.

22 Q And you were leaning with your chin on the seat?

23 A I was leaning, but I was looking not only in front,
24 I looked to the right, to the left and -- well, I didn't
25 suppose it would happen, you know. I just --

1 Q But you were leaning toward the front seat?

2 A With one hand, yes, just like this (indicating),
3 and I looked a little to the side.

4 Q On the left or right side of the Volkswagen?

5 A I was behind my son, so it was on the left.

6 Q So your son's head, I take it, was in front of you?

7 A Not exactly. I was a little to the side.

8 Q To the left of his head?

9 A To that side. To the left, yes.

10 Q And what happened to you?

11 A Well, I was -- when it was, you know, crash, I
12 was thrown against -- with my head against the seat and my
13 hand was -- this one which was down here (indicating), so it
14 went against the seat down and I broke my hand.

15 Q Were you able to get out of the car yourself?

16 A Yes. And I hit my head and had some bruises,
17 but I was conscious, completely conscious.

18 THE COURT: Thank you, ma'am. No questions.

19 REDIRECT EXAMINATION

20 BY MR. TRAUB:

21 Q Yes. And what happened to your son?

22 THE COURT: Wait. Wait, please. Did you
23 say you had no questions?

24 MR. MORAN: Not at this time, Your Honor.

25

1 BY MR. TRAUB:

2 Q What happened to your son?

3 A Well, I looked at -- after this crash, I looked
4 at my son. The very first thing I lifted my head and I seen
5 my son like this (indicating) unconscious and blood was running
6 from his nose, both nostrils dripping and from his wound
7 also blood was dripping. Somebody opened the car and the only
8 thing I could say "handkerchief". Somebody gave me a
9 handkerchief, and I was holding his wound.

10 THE COURT: Any other questions?

11 BY MR. TRAUB:

12 Q Are you able to talk now, ma'am?

13 A Yes.

14 Q Do you know the name --

15 THE COURT: Well, counsel, this is going
16 far beyond your direct.

17 MR. TRAUB: Okay, Your Honor. I have no
18 further questions.

19 THE COURT: You may step down, madam.

20 Thank you.

22 * * * * *

23

24

25

ROGER VAN DAMME, called as witness, having been first duly sworn, testified on his oath as follows:

THE CLERK Please state your name and address for the record.

THE WITNESS: Roger Van Damme.

3300 Bailey Avenue, Bronx, New York.

THE CLERK: Thank you. You may be seated.

DIRECT EXAMINATION

BY MR. TRAUB:

Q What do you do now, Mr. Van Damme?

A I am a student at the University of Chicago now.

Q And at the time this action was brought, were you a resident of New York City?

A Yes, I was.

Q And were you involved in a collision in Milford, Connecticut on September 29, 1972?

A Yes, I was.

Q And are you able to tell the ladies and gentlemen of the jury about the collision itself and what happened?

A I remember nothing for --

Q Just answer yes or no. Are you able to tell us about the collision?

A No. I am not able to

8 Do you remember anything before the collision or

1 at the time of the collision?

2 A From about four days before the collision I
3 remember nothing.

4 Q And why is that, sir?

5 A That was because of cranial injuries that I
6 received in the accident.

7 Q So as I understand it, today you can offer no
8 testimony as to the collision itself?

9 A I cannot.

10 MR. TRAUB: Thank you. That is all I have
11 of this witness, Your Honor.

12 THE COURT: Any cross?

13 MR. MORAN: No questions, Your Honor.

14 THE COURT: You may step down, sir.

15 MR. TRAUB: Plaintiff rests, Your Honor..

16 THE COURT: Can you go forward, Mr. Moran?

17 MR. TRAUB: For the record, I better say
18 that the plaintiff rests insofar as the issues of
19 liability are concerned.

20 THE COURT: So the jury might know what the
21 devil we are talking about, the lawyers have asked me
22 and I have agreed that we would try this case in
23 halves. The first half will be whether the defendants
24 are liable, and if you find yes, then we will go into
25 the question of money later on.

1 there was a police investigation. There are other
2 things that he might have offered. He saw fit not
3 to.

4 I feel that he has failed to establish that
5 the driver of this rig did anything improper that was
6 contributing or the proximate cause of this accident.
7 He has left too many things to conjecture and guess.

8 THE COURT: Well, I will reserve on the
9 motion and you said you wanted to think about something
10 during the recess.

11 MR. MORAN: Yes, Your Honor. I am not sure
12 at this moment whether or not I will offer testimony
13 at all. I would like a few minutes to consider that
14 because it is a pretty serious thing.

15 THE COURT: All right. Would both or either
16 one of you gentlemen tell me about the guest rule in
17 Connecticut? The lady is a guest, I guess, in the
18 car. What does she have to prove?

19 MR. TRAUB: There is no guest statute.

20 THE COURT: There is no guest statute?

21 MR. MORAN: No, sir. There is no guest
22 statute in Connecticut. There hasn't been for a
23 number of years and it only applied with respect to
24 the operator of the car in which the guest, the man or
25 the lady was riding. In a suit against his or her driver.

1 THE COURT: Oh.

2 MR. MORAN: That was when the guest statute
3 was invoked.

4 THE COURT: Is there any duty on the guest
5 in the car to not be negligent herself or something?

6 MR. MORAN: Well, there are some cases, if
7 Your Honor pleases, that places a duty having in mind
8 reasonable care as little care, but not entirely void
9 of care, so to speak. There are cases which say that
10 the passenger is required to see what he or she might
11 reasonably see under the conditions that existed.

12 MR. TRAUB: Well, I don't agree. I don't
13 think --- first of all, there is no claim of
14 contributory negligence against the passenger.

15 MR. MORAN: No. That is right.

16 MR. TRAUB: I don't believe that the Court,
17 if charging on contributory negligence of her, would
18 be consistent with the pleadings. There is no claim
19 she was negligent.

20 MR. MORAN: No. I don't have any special
21 defense, Your Honor.

22 THE COURT: No. I was more worried about
23 a guest statute.

24 MR. TRAUB: No, sir.

25 MR. MORAN: No. There is none, Your Honor.

1 the Court's intervention during the trial of this case.
2

3 I believe strongly after fifteen years of
4 trying cases that juries are very much influenced by
5 the attitude of a trial judge, and I believe that your
6 attitude suggested to this jury that you were biased
7 against the plaintiffs' case and have sided with the
defendants.

8 And my clients or one of my clients said to
9 me after we departed from the court yesterday, "Why
10 doesn't the Judge like you? Does he think we shouldn't
11 win?" They were very upset. If that is their
12 attitude, three people who as far as I know have never
13 been in a court of law before or any similar process
14 like this, a trial, they personally felt that you were
15 prejudiced against me and if they felt that, I feel
16 the jury did. I feel if the Court had not intervened,
17 We would have a better opportunity to prevail.

18 The sum and substance is it was a very short
19 case, I see no reason at all for the Court showing such
20 impatience and criticism of counsel. I think the case
21 should be mis-tried. I think the Court should dis-
22 qualify himself. I think we should be given an oppor-
23 tunity to try the case before another Court.

24 THE COURT: Well, I heard you out and are
25 you done?

1 MR. TRAUB: Yes, sir.

2 THE COURT: I will deny the motion and just
3 comment shortly or briefly to the affect that I think
4 what you now are moving on is an after-thought, when you
5 got back to your office last night to prepare your
6 request to charge and talked with your associates that
7 you found that you didn't do such a good job and to
8 protect that error, you now made this motion.

9 I might be wrong, but in any event, I will
10 deny the motion. You have an exception.

11 MR. TRAUB: Thank you, Your Honor.

12 THE COURT: Now, with regard to the request
13 to charge which counsel for the plaintiff gave me, I
14 have read it. It consists of twenty-nine separate
15 paragraphs on eight pages. I don't know whether there
16 are other cases that are recorded in the annotation of
17 the General Statutes or not, but I would think that any
18 request to charge, if I followed all of them as counsel
19 asked me to, I would be impeached or could be impeached.

20 But in any event, pursuant to the rule, I
21 hereby advise you that I will charge request number 1
22 and number 5 and number 12 and 18, 26 and 29 either in
23 haec verba or in my own words, and you submitted
24 rather confusing interrogatories to the jury unless
25 the clerk had them mixed up. But one set seemed to

1 Now, you saw Mr. McDougall, you listened
2 to him, and you heard what he had to say, and I
3 couldn't quite make up my mind when he was talking
4 about Mr. McDougall whether or not he decided that
5 Mr. McDougall wasn't to be believed at all or whether
6 he didn't know what he was talking about or that you
7 should select certain sections of what he said and
8 disregard all the others. I am certainly not going
9 to make any attempt to have you forget anything that
10 McDougall said or all of what McDougall said. You
11 heard what he said. He is the only witness that has
12 been produced in this courtroom, except the lady who
13 testified who offered you any indication of what was
14 going on there that day.

15 Now, Mr. Traub says no comment can be made
16 by counsel relative to evidence except the evidence
17 that was offered here in this courtroom, and that is
18 correct. Now, he has an opportunity to say whatever
19 he thinks is proper in a few minutes, and when you
20 become a member of a civil jury of the State of
21 Connecticut, there is no obligation on your part
22 collectively or individually to leave your common
23 sense outside the corridor some place before you get
24 into the box, and Mr. Traub in the course of his
25 presentation produced two photographs, and the evidence

2 was by somebody that this combination of pictures
3 shows the situation that existed after this accident
4 had taken place. And in one of the pictures there is
5 a man standing there and you will have the picture,
6 you can look at it, and it looks to me like he is a
7 police officer, and it looks to me like he is in the
8 process of trying to do what a police officer would
9 ordinarily do in a situation as depicted here. And
10 having in mind that and having in mind the description
11 that has been offered here relative to the conditions
12 that existed prior to, during and after this impact,
13 do you think that there were police officers carrying
out their obligation --

14 MR. TRAUB: Your Honor, I object to this.
15 There is absolutely no propriety whatsoever of any
16 comment on any witness that was not called to this
17 court. Mr. Moran could have called anyone he wanted
18 to.

19 MR. MORAN: If Your Honor please --

20 MR. TRAUB: May I, please --

21 THE COURT: No, counsel. I understand your
22 point. I am going to overrule it. He can comment on
23 evidence that you offered and suggest to the jury
24 certain inferences to be drawn from exhibits in
25 evidence. You may have an exception, however.

MR. TRAUB: May I, please?

MR. MORAN: Ladies and gentlemen, do you think -- does it appeal to your common sense that having in mind what appears here in these pictures that there were members of a police department or more than one police department that performed the duties of police associated with this sort of thing, particularly in view of the fact that his exhibits shows a policeman, and as I say and you look at it, it looks to me as if he is trying to do what he can to control traffic that existed at the time this photograph was taken, and do you think with complete propriety that he had an opportunity to bring in by summons or in any other fashion those officers or an officer and offer testimony as to what he might or might not know and do you think that his failure to produce this --

MR. TRAUB: Your Honor, I object to the words "complete propriety". I object to the whole thing. Mr. Moran could have called in any police officer.

MR. MORAN: Please.

THE COURT: I am going to tell the jury that Mr. Moran didn't have an obligation to prove a blessed thing except his obligation to prove contributory negligence on the part of Roger Van Damme. The

1
2 obligation to prove all the essential elements of
3 claim is on you and nobody else. You may have an
4 exception. Yes.
5

6 MR. TRAUB: It is the word "propriety".
7

8 THE COURT: You may have an exception,
9 counsel.
10

11 MR. MORAN: Ladies and gentlemen, this
12 sort of thing is rather disturbing, but to get back to
13 the point that I made, do you think that he could have
14 properly brought in members of the police department
15 or a member of the police department to testify in
16 this case? And do you think that his failure to do
17 that was based upon his knowledge that the cops
18 wouldn't help him? Don't you think for one minute that
19 if Mr. Traub felt that there were witnesses available
20 and there must have been in view of the picture that
21 he offered here, if they were available, he would have
22 brought them in here unless he felt they wouldn't be
23 helpful to the cause that he advocates here.
24

25 He was anxious to know what I would have to
say about things. That is one thing. And he has an
opportunity to get up and tell you why he didn't do it.
You are not obliged to draw the inference that it
would be unfavorable, but is it reasonable when he is
producing evidence to persuade you people that

1 McDougall is to blame for this?

2 With respect to the testimony of the other
3 only witness who was able to testify relative to the
4 accident that was produced by counsel, and Mr. Traub
5 read parts of the transcript, and I am not for one
6 second suggesting that he didn't read it accurately
7 and just as it appears, and he did read to you on
8 page 30 a question:

9 "Q Did the Volkswagen collide with the truck?"

10 "A Yes. He came under it."

11 And look at the photographs that are in
12 evidence, and look to see where if you can determine
13 there was any indication of damage on that truck.

14 And again, I am not trying to substitute my
15 thinking for your own, but look at it, look at both of
16 them, and you will decide whether or not there is any
17 damage on any section of that truck, except what might
18 readily have been caused as a result of a Volkswagen
19 jetting under it between the wheels while the man was
20 headed and partially into North Street as he said, and
21 as you can see here with the photograph that he has
22 introduced which is this one, his Plaintiff's Exhibit 4.

23 And incidentally, the other one I was using
24 was Plaintiff's Exhibit 3.

25 To get back to the transcript:

1 "Q Would you tell me again what you remember
2 of the accident? Keep your face toward the jury . . ."
3 This is by the Judge " . . . because they're the ones
4 that want to hear it more than I do. You said you were
5 proceeding in the back seat of the car with your son
6 driving, that it was drizzling and what happened?
7 Look at the jurors.

8 "A Yes. My son, suddenly a scream of fear.
9 I was sitting like this, leaning with one hand on the
10 front seat . . . " And she was indicating . . .
11 you know, looking around what was going on, and one
12 hand down here . . . " And again she indicated
13 " . . . so that when I heard him screaming, I looked
14 up and I seen the truck before my eyes. But I see at
15 the same time after my son screamed, he took the wheel,
16 pressed with his feet on the brakes and tried to
17 turn it a little bit to avoid, but it was -- the
18 truck was pretty close. It was slippery and the car
19 skidded." The boy's automobile. Her automobile.

20 The attempt on the part of Mr. Traub to
21 persuade you people that here was a car coming along,
22 headed at the same spot that the truck was headed and
23 the truck failed to give way, you will recall the
24 evidence. You will recall, among other things, that
25 my driver, the truck driver had a green arrow so that

1 he could turn left. There were a combination of lights
2 there. He also said that the fellow coming in the
3 opposite direction across that esplanade had a green
4 arrow so that they could go left, and he said that he
5 saw these cars there, one of them made a left hand
6 turn, the car in back of it was in the left lane turn
7 or the left turn lane, whichever is proper, and he
8 kept going, and the next thing he knew he felt a thud
9 or a bump or whatever it was he said, and he got out
10 and the Volkswagen had run into the side of his
11 automobile, his truck, partially under it.

12 In respect to the exhibits that have been
13 offered, you will have them. You will recall that
14 there was some trouble -- I guess it's rather
15 ordinary. It's hard for people at times to understand
16 a map and particularly photos that are aerial. But
17 with respect to the photograph that will be in evidence,
18 that huge aerial picture, Mr. Traub was meticulous in
19 introducing it only to show the boundary.

20 You will remember, I hope, when I examined
21 Mr. Fitzgerald, the engineer, and you will remember
22 what he had to say why he failed to put any lights on
23 here or show in the diagram where the lights were,
24 and you will remember what I asked him about whether
25 or not there was construction that afternoon at that

1 time, at that point. You will remember what he said
2 about it. He said he didn't know.

3 I will tell you who would have known. There
4 is no burden on me to bring him in. The cops would
5 have known, and they could have told what the physical
6 set-up was there. And another thing, I didn't ask
7 McDougall any questions. The only one that asked him
8 questions was Mr. Traub, and why didn't Mr. Traub ask
9 him about the construction or if there was construction.
10 These are things that he did not produce. And is there
11 a suggestion that he didn't produce it because he
12 didn't want to have you folks know about it? And if
13 you should draw that conclusion, you can further go
14 along and draw the conclusion that -- you don't
15 have to, but you --

16 MR. TRAUB: I object to that, Your Honor.

17 THE COURT: Wait. Wait.

18 MR. TRAUB: That is objectionable. There
19 is no law which permits this jury to take any
20 inference on any evidence that was not produced.

21 THE COURT: They can draw whatever inference
22 they wish based upon the evidence or lack of evidence.

23 MR. TRAUB: We have law in Connecticut,
24 Your Honor --

25 THE COURT: Counsel, please. You have an

1 exception.

2 MR. TRAUB: May I just recite the case?

3 THE COURT: No. Of course not. Whoever
4 heard of that.

5 MR. MORAN: There is an appeal to your
6 common sense that if you were advocating the cause of
7 anyone at all on a question of liability, you would
8 do the best you could to produce the people that
9 would help your cause and by the same token the fact
10 that you didn't produce those people, is it reasonable
11 to conclude that they wouldn't help the cause that he
12 advocates. He has an opportunity to say whatever he
13 feels should be said. I am not anxious about what he
14 is going to say, but I am very interested in how he
15 explains the failure to produce people that were
16 available.

17 With respect to Mr. Fitzgerald, I asked him
18 a question, "Do you know when that photograph was
19 taken?"

20 "A No. I don't."

21 "Q You do know, however, that the islands as
22 shown on the photograph are not the same as the islands
23 that you have there in your map?"

24 And he said "Yes." There's too much left
25 here to guess. There is too much left here in this

7 THE COURT: The Court Reporter needs a
8 little rest, so we will take a short recess, then we
9 will start.

THE COURT: Ladies and gentlemen, everybody
agrees this has been a comparatively short case. I
am sure you know, however, that whether a case is
long or short, it's always an important case, important
to the plaintiffs and equally important to the
defendants. And oddly enough, the most important part
of the case is the part that you people are going to
play in a little while because you and you alone are
going to decide whether the defendants are liable to
the plaintiffs.

1 according to the oath that you took about a week ago
2 when, if you recall, you promised us through the Clerk
3 that you would well and truly try the issues joined
4 and a true verdict rendered.

5 And I suggest to you that you cannot do
6 that according to your oath if for one moment you
7 permit any kind of an emotion to enter into your
8 thinking or your discussions. And by emotions, I
9 mean emotions like bias or prejudice or sympathy. I
10 suggest that you will be true to your oath if you
11 analyze the evidence analytically and coldly, the
12 same as you would some serious problem at home or in
13 business, and I am sure you know that once you let
14 emotions interfere with your thinking, then all is
15 lost.

16 Now, this case is a case involving the
17 collision between two automobiles, and you might be
18 wondering how come that kind of a case is in the
19 Federal Court. And the answer is very simple. As
20 far back as 1789 when all of this business started,
21 the Federal Courts have been open to lawsuits between
22 citizens of different states. The plaintiff,
23 Roger Van Damme, and his mother, Olga Van Damme, are
24 citizens and residents of the State of New York. The
25 defendant, McDougall, is a citizen and resident of

1 the State of Connecticut, and the National Car Rental
2 System, Inc., is a corporation organized under the
3 laws of Nevada, and that too has an office here in
4 Connecticut. So there is the diversity between the
5 parties to the lawsuit. And the Federal Court, as I
6 said, has been open to such people since 1789.

Now, the only issue, as I said a minute ago, for your deliberation and determination is whether or no the plaintiffs, Mr. Van Damme and his mother have persuaded you by a preponderance of the credible evidence that the accident in which they both sustained injuries was caused by the negligence of the defendants, particularly, Mr. William McDougall, the driver of the truck.

15 Now, in that connection, I am going to read
16 to you a Connecticut statute. It says in substance
17 that:

24 And if you remember, Mr. McDougall said
25 that his firm had rented or leased the truck from

the National Car Rental System. So the issue of negligence is whether he, Mr. McDougall, was negligent.

Now, as I said at least once during summations, and I say it again now that the law places the burden on the plaintiffs to prove by a preponderance of the evidence that the defendants were negligent and that such negligence was a substantial factor in bringing about the injuries that each of the plaintiffs have sustained.

Now, negligence has been defined as the conduct of a person which falls below the conduct of the ordinary and prudent person under the same or similar circumstances. In other words, you have to apply the test of what the ordinary and prudent operator of an automobile would have done under the same or similar circumstances. If the conduct of the driver, Mr. McDougall, fell below the conduct of that reasonably prudent man, then you can say that both defendants were negligent.

If you find that the conduct of Mr. McDougall was about equal to or above the conduct of the ordinary prudent operator of an automobile under the same circumstances, then the defendants were not negligent. And that causes me now to read to you two more Connecticut statutes.

One says that "The driver of a vehicle intending to turn to the left within an intersection shall yield the right of way to any vehicle approaching from the opposite direction which is within the intersection or so close to such intersection of public highways as to constitute an immediate hazard."

I will read it again because it is important to this case. "The driver of a vehicle intending to turn to the left within an intersection shall yield the right of way to any vehicle approaching from the opposite direction which is within the intersection or so close to such intersection of public highways as to constitute an immediate hazard."

Another section says that as used in this section which I just read, "Intersection means the area common to two or more highways which cross each other." And it continues and says ". . . that each driver of a vehicle approaching an intersection shall grant the right of way at such intersection to any vehicle approaching from his right when such vehicles are arriving at such intersection at approximately the same time unless otherwise directed by a traffic officer."

Now, there is a second question that has to be answered only if you answer the first question

1 in the affirmative. That is, that the defendant,
2 McDougall, was negligent. So if you have found that
3 there was no negligence on the part of McDougall, then
4 that is the end of the case and you don't have to
5 answer any more questions. In fact, I am going to
6 give you three questions -- four questions which
7 I might as well read now so you can understand what
8 I am talking about.

9 I call them Interrogatories to The Jury.
10 Interrogatories is a fancy legal word meaning questions.
11 And the first one is: Do you find that the defendant,
12 William F. McDougall, was negligent? And then two
13 spaces for yes or no.

14 Secondly, if you have answered yes to
15 question one, do you find that the negligence of
16 defendant, William F. McDougall, was a substantial
17 factor in bringing about the injuries to the
18 plaintiffs? And a similar space for yes or no.

19 Thirdly, do you find that the plaintiff,
20 Roger A. Van Damme, was negligent? A space for yes
21 or no.

22 And lastly, if you have answered yes to
23 question three, do you find that the negligence of the
24 plaintiff, Roger A. Van Damme, was a substantial factor
25 in bringing about the injuries to him and his mother?

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So to get back to my charge in chief, I said there was a second question to be answered only if you have answered the first question in the affirmative. That is, that the defendant, McDougall, was negligent. So if you have found that there was no negligence on the part of McDougall, then that is the end of the case and you need not answer any more questions. However, if you find that the defendant, McDougall, was negligent, then the next question is: Was such negligence a substantial factor in bringing about the injuries to each of the plaintiffs?

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Now, the defendants not only deny that they are liable, but they also claim that the plaintiff, Roger Van Damme, in the operation of the Volkswagen was himself contributorily negligent. On this issue the burden is on the defendant to prove the negligence of Mr. Van Damme.

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Accordingly, if you find that the defendant, McDougall, was negligent and that such negligence was a substantial factor in producing the injuries complained of, then your next question is: Was the plaintiff, Roger Van Damme, the driver of the Volkswagen himself contributorily negligent? That is, did his conduct fall below the conduct of a reasonable and prudent person under the same or similar circumstances?

1 If you find that his conduct was not
2 negligent, you need not answer the next question. But
3 if you find that he was, then you must proceed to the
4 last question. Was his negligence, that is,
5 Mr. Van Damme's negligence, a substantial factor to
6 bring about the injuries to himself and to his mother?

7 Now, of course, Mrs. Van Damme was a
8 passenger in the Volkswagen and whether or not her
9 son was negligent cannot be attributed to her in any
10 way. In other words, she is entitled to a verdict
11 if you find that the defendants were negligent and
12 that such negligence was a substantial factor in
13 producing her injuries.

14 So I am going to, as I said, give you those
15 four questions and you fill out the answers and from
16 your answers we will figure out what the verdict is.

17 Now, as I said before, in all civil
18 litigation, and this is a civil lawsuit, the burden
19 is on the plaintiff or plaintiffs to prove every
20 essential element of their claim by a preponderance
21 of the evidence. And if he or they fail in that
22 burden, of course, your verdict then must be for the
23 defendant.

24 Now, to establish a preponderance of the
25 evidence means to prove that something is more likely

1 so than not so. So if you find on weighing all of
2 the evidence that the scales are evenly balanced,
3 then your verdict must be for the defendant because,
4 obviously, the plaintiff has not persuaded you. But
5 if you find on weighing all the evidence that the
6 scales tip ever so slightly in favor of the plaintiffs,
7 then, of course, they have persuaded you and they are
8 entitled to a verdict from your hands.

9 Now, there was during summations some
10 reference to a certain witness or witnesses that were
11 not called. In a Federal Civil trial, both parties
12 are entitled to receive from the Clerk a subpoena
13 that can call for the attendance of a witness and
14 that subpoena can be served any place within the
15 State of Connecticut. Now, X or Y or Z could have
16 been called by either side as a witness. So that
17 from the failure of either side to call him or them
18 or her may infer that his or their testimony might
19 have been unfavorable to either one side or the other,
20 but it is equally within your discretion to draw no
21 inference at all for the failure of the plaintiff or
22 the defendant to call X or Y or Z.

23 Now, I have had occasion on a number of
24 times to interrogate and interrupt the witness, and
25 I did it for the purposes of clarity and also to

1 expedite matters. I did not intend to suggest by my
2 questions that I had an opinion as to the merits of
3 the case because I have none.

4 I also frequently ruled on questions of
5 law and matters of evidence. I sustained objections
6 and overruled objections. Those are matters that
7 you shouldn't concern yourselves one iota. Just
8 forget them because really you would be encroaching
9 on my job if you got to be worrying about that, and
10 I would be encroaching on your job if I expressed
11 an opinion as to the merits of the case.

12 So the questions, you know, that you have
13 to answer I will give to the foreman and, you know,
14 here in Connecticut, when you retire to the jury room,
15 you select one of your own members as a foreman or
16 forelady, and he or she will preside over your
17 deliberations and will be your spokesman here in
18 court.

19 Now, I must talk to the lawyers in your
20 absence, and I think it would be more expedient
21 rather than to have you move if I ask the lawyers to
22 come into the chambers for a moment. So will you
23 excuse us, please?

24 (The following transpired in chambers.)

25

1
2 THE COURT: Gentlemen, do you have any
3 exceptions?
4

5 MR. TRAUB: Yes, sir. I do. As I
6 understand, I don't have to accept --
7

8 THE COURT: Counsel, please. Just do
9 you have any exceptions?
10

11 MR. TRAUB: Yes. I do.
12

13 THE COURT: Yes. All right.
14

15 MR. TRAUB: The failure to charge on
16 negligence per se, I think, is harmful and error
17 under Connecticut law. May I have my book, please?
18

19 THE COURT: You have an exception.
20

21 MR. TRAUB: That is number one. Of course,
22 I reserve all other paragraphs that were not charged.
23

24 THE COURT: You have an exception to those
25 that I didn't charge.
26

27 MR. TRAUB: I except to all that were
28 charged.
29

30 THE COURT: I thought you said you are
31 reserving to those paragraphs that I didn't charge
32 and I was going to give you an exception to those
33 paragraphs that I didn't charge.
34

35 MR. TRAUB: Yes, sir. I'm sorry. I
36 misunderstood Your Honor. So there is no misunderstanding,
37 I have excepted for all those that haven't been charged.
38

1 I have spelled out in the complaint in
2 paragraph 13 A through E, Allegations of Negligence.
3 I believe that the Court should have commented on
4 those to the jury.

5 THE COURT: No. But you have an exception
6 for my failure to comment on them. Yes.

7 MR. TRAUB: All right, sir. I am referring
8 particularly to paragraphs of my -- well, in
9 other words, as I understand it, I don't have to
10 comment on my Requests to Charge. I can't persuade
11 you to change your mind. Is there any sense of
12 arguing on my Requests to Charge?

13 THE COURT: No. No. Do you have any,
14 Mr. Moran?

15 MR. MORAN: Only one, Your Honor. I
16 except to the Court's charge because the Court failed
17 to indicate to the jury as it had indicated from the
18 Bench that there wasn't any obligation on the
19 defendant to offer any testimony.

20 THE COURT: Ch, yes. I will do that.

21 MR. MORAN: That is the only thing I have,
22 Your Honor.

23 THE COURT: Very well. And if I do that,
24 will you except to that? You can do it now if you
25 wish.

1 MR. TRAUB: Yes. I am going to except
2 to that.

3 THE COURT: Very well.

5 (The following transpired in the court
6 room in the presence of the jury.)

8 THE COURT: I was reminded, ladies and
9 gentlemen, that I neglected to charge you that the
10 defendant is under no obligation to prove a blessed
11 thing except, of course, if he intends to rely on
12 the contributory negligence of Mr. Van Damme, it is
13 his burden to prove that.

14 So you may now retire and thank you.

16 (Whereupon, the jury commenced their
17 deliberations at 12:10 P.M.)

(1:30 P.M.)

20 THE COURT: Gentlemen, I have a note from
21 the jury and it reads: "The second part of the
22 statute wherein a police officer can nullify the
23 rules of right of way . . . " comma or period
" . . . Do traffic lights have the same authority?"

I might add the spelling is not the best.
25 I am not too sure I understand the question, but I

1 thought of answering it somewhat along these lines.

2 If I understand your question correctly, traffic
3 lights at an intersection in the absence of a police
4 officer directing traffic are controlling. And I
5 think they're referring to one of the statutes that
6 I read in which a police officer is mentioned, but I
7 will be very happy to hear your comments or thoughts.

8 Do you want to say something, Mr. Moran, or not?

9 MR. MORAN: Well, I wondered if Mr. Traub
10 did. What I had in mind, if Your Honor pleases, is
11 that what the Court read, I don't think there is
12 any question about it being correct, but I also
13 think that in view of the question which seems to
14 be a little unusual, to say the least, they should
15 be told that there is no evidence as to whether there
16 were any policemen there or not. There is no evidence
17 that there was or was not a policeman there.

18 THE COURT: Well, I don't think they are
19 troubled about somebody thinking that there was a
20 policeman there. See, the statute that I read is
21 the 14-245, and the last sentence reads -- the
22 first sentence defines intersection, and then it
23 continues "Each driver of a vehicle approaching an
24 intersection shall grant the right of way at such
25 intersection to any vehicle approaching from his right

1 when such vehicles are arriving at such intersection
2 at approximately the same time unless otherwise
3 directed by a traffic officer."

4 So I think the question is phrased in that
5 background, and I will read it again. The note from
6 the jury reads: "The second part of the statute
7 wherein a police officer can nullify the rules of
8 right of way . . . " period or comma ". . . do
9 traffic lights have the same authority?"

10 I think they mean in the absence of a cop
11 directing traffic, do the lights control? I will
12 listen to your thoughts.

13 MR. MORAN: I don't have any further
14 observation to make, Your Honor.

15 MR. TRAUB: Well, first of all, if I may
16 say in paragraph 5 of my Requests --

17 THE COURT: No. Counsel, please.

18 MR. TRAUB: Please, may I just make this
19 remark?

20 THE COURT: No, counsel. No.

21 MR. TRAUB: All right.

22 THE COURT: Do you want to make some
23 suggestions about the note I got?

24 MR. TRAUB: Yes, sir. I do. I,
25 number one, agree with Mr. Moran that I would ask the

1 Court to suggest to the jury that there is no evidence
2 in the case that there was a police officer there at
3 the time. And secondly --

4 MR. MORAN: Or not there.

5 MR. TRAUB: Or not there. Well, I don't
6 see how you could have evidence of a negative. But
7 secondly, I believe you are suggesting that you are
8 thinking of saying to them that in the absence of a
9 police officer, the light is controlling, and I would
10 agree with that, yes.

11 THE COURT: So then it is the consensus
12 of opinion that I tell the jury that both counsel and
13 the Court agree that there was no evidence one way or
14 the other that a policeman was present at the time of
15 the accident.

16 MR. TRAUB: Yes, sir.

17 THE COURT: And if I understand the
18 question correctly, traffic lights at an intersection
19 in the absence of a police officer directing traffic
20 are controlling.

21 MR. MORAN: I will agree with that.

22 MR. TRAUB: I will agree with that.

23 THE COURT: Why don't I just dictate the
24 first part and send it in. I will read it again.

25 MR. TRAUB: Whatever you say, Your Honor.

1 THE COURT: It is easier for me to dictate
2 the first part. I will be right back.

4 All right, gentlemen. The note is now
5 retyped and it reads: "First, both lawyers and the
6 Court agree that there was no testimony in the case
7 as to whether there was or was not a police officer
directing traffic at the time of the accident.

If I understand your question correctly,
traffic lights at an intersection in the absence of
a police officer directing traffic are controlling."

11 Agreed?

12 MR. MORAN: Yes, Your Honor.

13 MR. TRAUB: Yes, Your Honor.

14 THE COURT: Thank you.

15 (At this time the note was delivered to
16 the jury by the Marshal.)

(Court reconvened at 2:02 P.M.)

19 THE COURT: Mr. Foreman, would you identify
20 yourself, please?

21 THE FOREMAN: My name is Carl Holstein.

22 THE COURT: And has the jury answered those
23 questions we gave you?

24 MR. HOLSTEIN: Yes.

25 THE COURT: May I have them, please?

1
2 (Document handed to the Court by the
3 Marshal.)
4

5 THE COURT: The Interrogatories read:
6
7 "Question 1: Do you find that the defendant,
8 William F. McDougall, was negligent?"
9

10 "Answer: No." And no other questions were
11 answered; is that correct?
12

13 MR. HOLSTEIN: Correct.
14

15 THE COURT: Ladies and gentlemen, listen
16 to your verdict as it stands recorded. You say in
17 answer to the Interrogatories that I gave you that
18 you find Mr. William F. McDougall not negligent and
19 so say you all?
20

21 (The jury answered "Yes".)
22

23 THE COURT: Shall I poll the jury,
24 Mr. Traub?
25

26 MR. TRAUB: No, sir.
27

28 THE COURT: All right. Thank you, ladies
29 and gentlemen. And we will try to advise you as
30 promptly as we can when we need you next for your
31 different assignment. Thank you so much. Good night.
32

33 (At this time the jury left the courtroom.)
34

35 THE COURT: Pursuant to the answers to
36 the Interrogatories or the answer to the one
37